



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RTID 0648-XD172

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Phase II of the Richmond-San Rafael Bridge Restoration Project

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to the California Department of Transportation (Caltrans) to incidentally harass marine mammals during construction activities associated with the Richmond-San Rafael Bridge Restoration project in Richmond, CA.

DATES: This authorization is effective from August 1, 2023 through March 30, 2024.

ADDRESSES: Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at:

<https://www.fisheries.noaa.gov/action/incidental-take-authorization-california-department-transportations-richmond-san-rafael>. In case of problems accessing these documents, please call the contact listed below.

FOR FURTHER INFORMATION CONTACT: Craig Cockrell, Office of Protected Resources, NMFS, (301) 427-8401.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed IHA is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as “mitigation”); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

Summary of Request

On December 28, 2022, NMFS received a request from Caltrans for an IHA to take marine mammals incidental to construction activities to restore portions of the Richmond-San Rafael Bridge. Following NMFS’ review of the application, Caltrans submitted a revised version on April 14, 2023, which was deemed adequate and complete on May 11, 2023. Caltrans’ request is for take of harbor seals (*Phoca vitulina*) by Level B harassment only. Neither Caltrans nor NMFS expect serious injury or mortality to result

from this activity and, therefore, an IHA is appropriate. There are no changes from the proposed authorization to the final authorization.

Description of the Specified Activity

Overview

Caltrans will conduct construction activities to restore a portion of the Richmond-San Rafael Bridge. Prior to restoration work Caltrans will install a debris containment system to ensure contaminants from construction are not deposited into San Francisco Bay. During the deployment and retrieval of the containment system disturbance (*i.e.*, Level B harassment) of harbor seals may occur. Once the debris containment system is deployed the restoration work on the bridge is not expected to result in any takes of marine mammals, as the containment system is expected to shield seals from disturbance as a result of visual and acoustic stimuli. Takes of harbor seals will occur at the nearby Castro Rocks haulout. The Richmond-San Rafael Bridge is located in the northern portion of San Francisco Bay and is located between Richmond, CA and San Rafael, CA. The debris containment system will be used on Piers 52-57. The deployment and retrieval of the containment system will only occur during between August 1 and March 30 to avoid pupping and molting seasons of harbor seals.

It is expected that the debris containment system will take up to 20 days to deploy and 10 days to remove (30 total days). The debris containment system will only be deployed during daylight hours but restoration work will occur throughout the day and night following deployment.

A detailed description of the planned construction project is provided in the **Federal Register** notice for the proposed IHA (88 FR 41920, June 28, 2023). Since that time, no changes have been made to the planned activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specific activity.

Comments and Responses

A notice of NMFS' proposal to issue an IHA to Caltrans was published in the **Federal Register** on June 28, 2023 (88 FR 41920). That notice described, in detail, Caltrans' activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. In that notice, we requested public input on the request for authorization described therein, our analyses, the proposed authorization, and any other aspect of the notice of proposed IHA, and requested that interested persons submit relevant information, suggestions, and comments. During the 30-day public comment period, NMFS did not receive any public comments.

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions in materials that are referenced in the document, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments) and more general information about these species (e.g., physical and behavioral descriptions) may be found on NMFS' website (<https://www.fisheries.noaa.gov/find-species>).

Table 1 lists all species or stocks for which take is expected and authorized for this activity, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable

population (as described in NMFS' SARs). While no serious injury or mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. All managed stocks in this region are assessed in NMFS' Pacific SARs, and NMFS has reviewed the most current information for the species. All values presented in Table 1 are the most recent available at the time of publication and are available online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>.

Table 1 -- Species Likely Impacted by the Specified Activities

Common name	Scientific name	Stock	ESA/MMPA status; Strategic (Y/N) ¹	Stock abundance (CV, N _{min} , most recent abundance survey) ²	PBR	Annual M/SI ³
Order Carnivora – Pinnipedia						
<i>Family Phocidae (earless seals)</i>						
Harbor seal	<i>Phoca vitulina</i>	California	N	30,968 (N/A, 27,348, 2012)	1,641	43

1 - Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

2 - NMFS marine mammal stock assessment reports online at: <https://www.nmfs.noaa.gov/pr/sars/>. CV is coefficient of variation; Nmin is the minimum estimate of stock abundance. In some cases, CV is not applicable.

3 - These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (e.g., commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range.

A detailed description of the species likely to be affected by the construction project, including a brief introduction to the affected stock as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (88 FR 41920, June 28, 2023); since that time, we are not aware of any changes in the status of the stock; therefore, a detailed description is not provided here. Please refer to that Federal Register notice for the description. Please also refer to NMFS' website (<https://www.fisheries.noaa.gov/find-species>) for generalized species accounts.

Potential Effects of Specified Activities on Marine Mammals and their Habitat

The effects of the installation and removal of the debris containment system from Caltrans' construction activities have the potential to result in behavioral harassment of marine mammals in the vicinity of the survey area. The notice of proposed IHA (88 FR 41920, June 28, 2023) included a discussion of the effects of the visual disturbance of the installation and removal of the debris containment system on marine mammals and the potential effects of that activity on marine mammals and their habitat. That information and analysis is not repeated here; please refer to the notice of proposed IHA (88 FR 41920, June 28, 2023).

Estimated Take of Marine Mammals

This section provides an estimate of the number of incidental takes authorized through the IHA, which will inform both NMFS' consideration of "small numbers," and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines "harassment" as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal

stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes are by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to the novel stimulus of the installation and removal of the debris containment system. Based on the nature of the activity, Level A harassment is neither anticipated nor authorized.

As described previously, no serious injury or mortality is authorized for this activity. Below, we describe how the take numbers are estimated.

Marine Mammal Occurrence and Take Estimates

In this section, we provide information about the occurrence of marine mammals, including density or other relevant information, which will inform the take calculations. We will also describe how this information is brought together to produce a quantitative take estimate for each species.

Castro Rocks is the largest harbor seal haulout site in northern San Francisco Bay and is the second largest pupping site in San Francisco Bay (Kopec and Harvey 1995). The harbor seal pupping season is from April to July in San Francisco Bay. Seals are present on the haulout year round during medium to low tides (Green *et al.*, 2004). Recent observations at the Castro Rocks haulout site reported approximately 300 seals during the pupping and molting seasons (Codde and Allen, 2020). The highest mean number of harbor seals observed at Castro Rocks during recent annual National Park Service surveys was 237 seals observed in 2019 (Codde and Allen, 2013, 2015, 2017, 2020; Codde 2020).

Caltrans expects to harass approximately 300 harbor seals per day during the installation and removal of the debris containment system. It is expected to take 30 days for Caltrans to complete this process. Based on these assumptions Caltrans requested

authorization of 9,000 takes by Level B harassment of harbor seals while hauled out.

NMFS concurs with this request.

Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, and impact on operations.

Mitigation for Marine Mammals and Their Habitat

Caltrans must implement the following measures during Phase II of the Richmond-San Rafael Bridge Restoration Project:

(1) Seasonal Work Restrictions: installation or removal of the debris containment system must not occur between Piers 52-57 from April 1-July 31 due to the pupping and molting period of harbor seals.

(2) Work must not take place outside of the containment system on the bridge between Piers 52-57 from April 1 to July 31.

(3) A non-disturbance buffer will be established within 400 feet (121 meters) of Castro Rocks on the south side of bridge.

(4) Staging of barges will not be allowed in the project area.

(5) Routes for watercraft to reach work locations will be predetermined in consultation with the project biologist to avoid harassment or take of marine mammals hauled out at Castro Rocks.

(6) No piles may be driven or vibrated to create staging locations for any watercraft. Barges and vessels will be tethered to the existing concrete bridge piers.

Based on our evaluation of the applicant's measures, NMFS has determined that the mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected

to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.*, presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.*, source characterization, propagation, ambient noise); (2) affected species (*e.g.*, life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral context of exposure (*e.g.*, age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.*, marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and,
- Mitigation and monitoring effectiveness.

Caltrans will monitor to collect data on marine mammal behavior, counts of the individuals observed, and the frequency of the observations. Caltrans will collect sighting data and observations on behavioral responses to construction for marine mammal

species observed in the region of activity during the period of construction. All observers will be trained in the identification of marine mammals and marine mammal behaviors.

- Protected species observers (PSOs) must be independent observers (*i.e.*, not construction personnel). All PSOs must have the ability to conduct field observations and collect data according to assigned protocols, be experienced in field identification of marine mammals and their behaviors. Caltrans must submit their resumes to NMFS for approval;

- Biological monitoring must occur 5 days prior to the Project's start date, to establish baseline observations.

- Observation periods will encompass different tide levels and hours of the day. Monitoring of marine mammals around the construction site will be conducted using binoculars as necessary.

- The location of the PSOs will be at a monitoring platform positioned on Pier 55 of the Richmond-San Rafael Bridge, at the closest pier of the Richmond-San Rafael Bridge to Castro Rocks. Pier 55 is approximately 21 meters from the nearest rock at Castro Rocks harbor seal colony.

Data Collection

Caltrans will record detailed information about counts and behaviors of all marine mammal species observed, times of observations, construction activities that occurred, any visual disturbances, and weather conditions, with particular focus on harbor seals at Castro Rocks. PSOs will use approved data forms to record the following information:

- Observation position and start and end times of observations;
- Weather conditions (sunny/cloudy, wind speed, fog, visibility), temperature, tide level, current, and sea state;
- Species counts (including with or without pup, and, if possible, sex and age classes of any observed marine mammal species;

- Identifying marks or color (scars, red pelage, *etc.*);
 - Position relative to Richmond-San Rafael bridge (distance and direction);
 - Movement (direction and relative speed);
 - Behavior (logging (resting at the surface), swimming, spyhopping (raising above the water surface to view the area), foraging, *etc.*);
 - Duration of sighting or times of multiple sightings of the same individual;
- and
- Details of any marine mammal behavioral disturbances, including information regarding the activity (*e.g.* disturbance from the containment system installation and removal or construction related disturbance within or outside the containment system), the type of behavioral response to the disturbance (flushing or head posturing), and the rate of disturbance on Castro Rocks. Disturbance events must be categorized according to the 3-point scale as shown in Table 2.

Table 2 -- Levels of Pinniped Behavioral Disturbance

Level	Type of Response	Definition
1	Alert	Seal head orientation or brief movement in response to disturbance, which may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, changing from a lying to a sitting position, or brief movement of less than twice the animal's body length.
2*	Movement	Movements in response to the source of disturbance, ranging from short withdrawals at least twice the animal's body length to longer retreats over the beach, or if already moving a change of direction of greater than 90 degrees.
3*	Flush	All retreats (flushes) to the water.

* Only observations of disturbance Levels 2 and 3 are recorded as takes.

Reporting Measures

Caltrans shall submit a draft report to NMFS within 90 days of the completion of marine mammal monitoring, or 60 days prior to the issuance of any subsequent IHA for this project (if required), whichever comes first. The annual report will detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed. If no comments are received from NMFS within 30 days, the draft final report will become final. If comments are

received, a final report must be submitted up to 30 days after receipt of comments. All PSO datasheets and/or raw sighting data must be submitted with the draft marine mammal report.

Reports shall contain the following information:

- Dates and times (begin and end) of all marine mammal monitoring;
- Construction activities occurring during each daily observation period including: (a) what type of restoration work is being completed, and (b) the total duration of work completed;
- PSO locations during monitoring; and
- Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance.

Upon observation of a marine mammal, the following information must be reported:

- Name of PSO who sighted the animal(s) and PSO location and activity at time of sighting;
- Time of sighting;
- Identification of the animal(s) (*e.g.*, genus/species, lowest possible taxonomic level, or unidentified), and PSO confidence in identification;
- Distance and location of each observed marine mammal relative to the bridge restoration work;
- Estimated number of animals by species (min/max/best estimate);
- Estimated number of animals by cohort (adults, pups, and group composition, *etc.*);
- Description of any marine mammal behavioral observations (*e.g.*, observed behaviors such as feeding or traveling), including an assessment of behavioral

responses thought to have resulted from the activity (*e.g.*, no response or changes in behavioral state such flushing or head posturing); and

- Detailed information about implementation of any mitigation measures, a description of specified actions that ensured, and resulting changes in behavior of the animal(s), if any.

Reporting Injured or Dead Marine Mammals

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA (if issued), such as an injury (Level A harassment), serious injury or mortality (*e.g.*, ship-strike, gear interaction, and/or entanglement), Caltrans will immediately cease the specified activities and immediately report the incident to the Office of Protected Resources

(PR.ITP.MonitoringReports@noaa.gov) and the West Coast Regional Stranding

Coordinator. The report will include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved (if applicable);
- Vessel's speed during and leading up to the incident (if applicable);
- Description of the incident;
- Status of all sound source used in the 24 hours preceding the incident;
- Water depth;
- Environmental conditions (*e.g.*, wind speed and direction, sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities will not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with Caltrans to determine necessary actions to minimize the likelihood of further prohibited take and ensure MMPA compliance. Caltrans will not be able to resume their activities until notified by NMFS via letter, email, or telephone.

In the event that Caltrans discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.*, in less than a moderate state of decomposition as described in the next paragraph), Caltrans will immediately report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator. The report will include the same information identified in the section above. Activities will be able to continue while NMFS reviews the circumstances of the incident. NMFS will work with Caltrans to determine whether modifications in the activities are appropriate.

In the event that Caltrans discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.*, previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Caltrans will report the incident to Office of Protected Resources, NMFS, and West Coast Regional Stranding Coordinator, within 24 hours of the discovery. Caltrans will provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. Construction activities will be permitted to continue.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50

CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be “taken” through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.*, intensity, duration), the context of any impacts or responses (*e.g.*, critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS’ implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.*, as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

NMFS does not expect Caltrans’ construction activities to cause long-term behavioral disturbance that will negatively impact an individual animal's fitness, or result in injury, serious injury, or mortality. Although the installation and deployment of the debris containment system may disturb harbor seals hauled out at Castro Rocks, NMFS expects those impacts to be of short duration (20 days for installation and 10 day for removal) with minimal effect to the animals. Minor and brief responses including short-duration startle reactions, are not likely to constitute disruption of behavioral patterns, such as migration, nursing, breeding, feeding, or sheltering.

The harbor seal stock for which incidental take is authorized is not listed as threatened or endangered under the ESA or determined to be strategic or depleted under the MMPA. The mitigation and monitoring measures, including the establishment of

seasonal work schedules, a non-disturbance buffer around Castro Rocks, and watercraft routes, will minimize disturbance of seals on Castro Rocks and make Level A harassment unlikely. Therefore, the mitigation and monitoring measures are expected to eliminate the potential for Level A harassment as well as reduce the amount and intensity for Level B harassment. The construction activities analyzed here are similar to, or less impactful than, numerous construction activities conducted in other similar locations which have occurred with no reported injuries or mortality to marine mammals, and no known long-term adverse consequences from behavioral harassment.

Anticipated and authorized takes are expected to be limited to short-term Level B harassment (behavioral disturbance) as construction activities will occur over the course of 30 days. Effects on individuals taken by Level B harassment, based upon reports in the literature as well as monitoring from other similar activities, may include increased swimming speeds, increased surfacing time, or decreased foraging (*e.g.*, Thorson and Reyff 2006). Individual animals, even if taken multiple times, would likely move away from the visual disturbance of the debris containment system installation and removal. Repeated exposures of individuals to this visual disturbance that could cause Level B harassment are unlikely to considerably disrupt foraging behavior or result in significant decrease in fitness, reproduction, or survival for the affected individuals. In all, there will be no adverse impacts to the stock as a whole.

There is no unusual mortality event (UME) currently associated with the harbor seal stock and there are no Biologically Important Areas or known important habitat, aside from Castro Rocks itself, within the project area. While essential fish habitat (EFH) for several fish species does exist in the project area, the activities will not modify existing marine mammal habitat since there is no in-water work. This construction activity should not impact marine mammals' foraging opportunities.

In summary and as described above, the following factors support our determination that the impacts resulting from this activity are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or authorized;
- Anticipated impacts of Level B harassment include temporary behavior modifications;
- Short duration and intermittent nature of the debris containment system deployment and removal;
- The specified project area is very small relative to the overall habitat ranges of the species and do not include habitat areas of special significance (Biologically Important Areas);
- The lack of anticipated significant or long-term effects to marine mammal habitat;
- The presumed efficacy of the mitigation measures in reducing the effects of the specified activity; and,
- Monitoring reports from other construction work in San Francisco Bay have documented little to no effect on individuals of the same species impacted by the specified activities.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS finds that the total marine mammal take from the activity will have a negligible impact on the affected marine mammal stock.

Small Numbers

As noted previously, only take of small numbers of marine mammals may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The amount of take NMFS authorizes in the IHA is below one-third of the estimated stock abundance for harbor seals (see **Estimated Take of Marine Mammals**). The take percentage of the estimated stock of harbor seals, if all estimated take events are assumed to occur to new individuals, is 29.1 percent. However, this take estimate is assumed to represent repeated takes of the same individuals over time and, therefore, the take estimate represents a significantly smaller actual percentage of the total stock. It is expected that approximately 300 harbor seals are hauled out on Castro Rocks on any given day during the project. The majority of these 300 individuals are expected to be comprised of the same animals during the duration of the project. Therefore, it can be reasonably expected that the percentage of individuals of the overall stock of harbor seals is closer to approximately 1 percent.

Based on the analysis contained herein of the activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks will not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species

No incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must evaluate our proposed action (*i.e.*, the issuance of an IHA) and alternatives with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NAO 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of this IHA qualifies to be categorically excluded from further NEPA review.

Authorization

NMFS has issued an IHA to Caltrans for the potential harassment of small numbers of harbor seals incidental to the Phase II of the Richmond-San Rafael Bridge Restoration Project in Richmond, CA, that includes the previously explained mitigation, monitoring and reporting requirements.

Dated: July 31, 2023

Kimberly Damon-Randall,
Director, Office of Protected Resources,
National Marine Fisheries Service.

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